

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. DANA LOUISE SOLOMON

Appeal from the Criminal Court for Knox County
No. 89458 Mary Beth Leibowitz, Judge

No. E2008-01713-CCA-R3-CD - Filed October 9, 2009

The Petitioner, Dana Louise Solomon, appeals the trial court's order dismissing her petition for post-conviction relief. The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Tennessee Court of Criminal Appeals Rule 20. The petition is barred by the statute of limitations and was properly dismissed. The State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Dana Louise Solomon, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Sophia S. Lee, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The Petitioner is serving a life sentence for her conviction of criminal responsibility of first degree murder of her husband. The conviction was entered by the trial court on January 13, 1999. This court filed the opinion in her direct appeal on August 18, 2000. Trial counsel moved to withdraw and was granted permission to do so. There was no application for permission to appeal filed with the supreme court.

The Petitioner filed the present petition for post-conviction relief on June 23, 2008. She acknowledged that her filing was untimely, but she alleged that she thought her attorney would continue to represent her, even though she did not tell him to do so. She acknowledged having received a letter from counsel in 2000 in which he advised her that nothing further could be done with her case. She also alleged that she had been "highly medicated since her incarceration until 2004 [and] . . . that she was diagnosed with Gillian Barr (Neuro Syndrome) and placed in [a] wheelchair from 10/2001 until July 2004."

A petition for post-conviction relief must be filed within one year of the final action by the highest state appellate court to which an appeal is made or within one year of the trial court's judgment becoming final. T.C.A. § 40-30-102(a). The record reflects that the judgments against the Petitioner were entered on January 31, 2007, and that no appeal was taken. The petition was not filed within one year of that date.

The Code provides for tolling of the statute of limitations in certain instances, none of which are met by the present petition. See id. at (b)(1)-(3). In addition, due process may allow tolling of the statute of limitations in limited circumstances. See, e.g., Burford v. State, 845 S.W.2d 204 (Tenn. 1992). In the present case, even if we were to assume that the Petitioner had stated a cognizable claim due for tolling the statute of limitations during the time that she was “highly medicated” and in a wheelchair, she has stated no basis for the four-year delay in filing a petition from 2004 until 2008. Given the allegations of the petition, due process does not permit tolling of the statute of limitations.

Upon consideration of the pleadings, the record, and the applicable law, the court concludes that the petition was properly dismissed. The State's motion for affirmance pursuant to Rule 20 is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

JOSEPH M. TIPTON, PRESIDING JUDGE